

03-27170

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No. 04-35755-DDO
Chapter 7

Peggy Fromdahl,

Debtor(s)

NOTICE OF HEARING AND MOTION
FOR RELIEF FROM STAY

TO: The Debtor(s) and other entities specified in Local Rule 9013-3(a).

1. JPMorgan Chase Bank as Trustee moves the Court for relief requested below and gives Notice of Hearing.

2. The Court will hold a Hearing on this motion at 9:30 a.m., on November 3, 2004, in Courtroom No. 228A, at the United States Courthouse, at 316 North Robert Street, in St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered no later than October 29, 2004 which is three days before the time set for the hearing(excluding Saturdays, Sundays, or holidays), or filed and served by mail no later than October 25, 2004, which is seven days before the time set for the hearing(excluding Saturdays, Sundays, or holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 7 case was filed on October 4, 2004. The case is now pending in this court.

5. This Motion arises under 11 U.S.C. §362 and Bankruptcy Rule 4001. This motion is filed under Bankruptcy Rule 9014 and Local Rules 9013-1 - 9019-1(d). Movant Requests Relief with respect to exempt property of the debtor subject to a lien.

6. By mortgage dated February 6, 2003, in the original principal amount of \$115,200.00 (the "Mortgage"), which mortgage was subsequently assigned by Document No. 1008374, Movant acquired a first mortgagee's interest in the following real property (the "Property"), to-wit:

Lot 23, Block 6, Elm Park Subdivision of Lots 8, 9, 10, 11 and 12, Block 3, D.P. Madden's Addition, Rochester, Olmsted County, Minnesota, and Lot 87, Auditor's Plat "A", less the West 132 feet thereof, and of Lots 95, 96, 103 and the East 33 feet of Lot 99, Auditor's Plat "A" of Lands in Section 1, Township 106, Range 14, Olmsted County, Minnesota.

The Mortgage was recorded in the offices of the Recorder, for Olmsted County, Minnesota on January 16, 2004, as Document No. 1008374. A copy of the Mortgage and assignment are attached hereto as Exhibit A.

7. The last payment received from Debtors was applied to the August, 2003 payment as that was the next payment due. Debtor(s) is delinquent under the terms of the note secured by the Mortgage with respect to monthly payments due as follows:

14 payments @ \$855.36	\$11,975.04
14 late charges @ \$42.77	598.78
BPO	235.00
Accrued late charges	85.54
Suspense Balance	-1.51
Attorneys Fees & Cost	<u>2,260.40</u>
TOTAL	\$15,153.25

The outstanding principal balance due Movant under the terms of the note is \$114,818.07 as of October 8, 2004, and interest accrues at the rate of 8.125% per diem per day. The amount therefore due and owing on said note is as follows:

Principal	\$114,818.07
Late charges	684.32
BPO	235.00
Suspense Balance	-1.51
Interest	11,936.52
Attorneys Fees & Costs	<u>2,260.40</u>
TOTAL	\$129,932.80

8. Movant does not have, and has not been offered, adequate protection of its interest in the Property. In view of the fact that this is a Chapter 7 liquidation proceeding, the Property is not necessary for an effective reorganization. Moreover, Debtor(s) failure to make payments to Movant when due, or otherwise provide Movant with adequate protection of its interest in the Property constitutes cause, within the meaning of 11 U.S.C. Sec. 362(d)(1), entitling Movant to relief from the automatic stay.

9. If testimony is necessary as to any facts relevant to this motion, Nancy A. Nordmeyer, 7300 Metro Boulevard #390, Edina, MN, will testify on behalf of Movant.

10. This is an attempt to collect a debt and any information obtained will be used for that purpose. This notice is required by

the provisions of the Fair Debt Collection Practices Act and does not imply that we are attempting to collect money from anyone who has discharged the debt under the Bankruptcy Laws of the United States.

WHEREFORE, Movant, respectfully moves the Court for an Order modifying the automatic stay of Sec. 362(a) so as to permit Movant to foreclose its Mortgage on the Property and for such other relief as may be just and equitable.

Dated: _____

10.15.04

Signed: /e/ Nancy A. Nordmeyer

SHAPIRO & NORDMEYER, L.L.P.

Nancy A. Nordmeyer-121356

Lawrence P. Zielke-152559

Attorney for Movant

7300 Metro Boulevard #390

Edina, MN 55439-2306

(952) 831-4060

VERIFICATION

I, Dan Aantzer, the Bankruptcy Manager for Fidelity National Foreclosure Solutions, the authorized servicer for movant, the movant named in the foregoing notice of hearing and motion, declare under penalty of perjury, that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on:

10-11-01

Signed:

[Signature]

Fidelity National Foreclosure Solutions
1270 Northland Drive, Suite 200
Mendota Heights, MN 55120



OFFICE OF COUNTY RECORDER
Olmsted County, Minnesota

I hereby certify that this document was filed in this office
on 1/16/2004 at 8:30:00 AM and was duly
recorded as document number A-1008374
DANIEL J. HALL, County Recorder, by _____ Deputy.

Well Certificate: _____ Received _____ Not Required
Apstr. - yes _____ no _____
Fees: _____

Total \$20.00

23-6 Elan Park

Received from/return to:
ROCHESTER TITLE & ESCROW
ROCHESTER, MN 55903

Prepared by and When Recorded Return To:
Shawna Person
USA Funding Corp
17035 W. Wisconsin Avenue
Brookfield
PARCEL NO. 64.01.33.006017

LOAN NO. 20302309N [Space Above This Line For Recording Data]

MORTGAGE

RTEC-4889

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated FEBRUARY 6, 2003, together with all riders to this document.

(B) "Borrower" is
Peggy J Fromdahl, an unmarried person

Borrower is the mortgagor under this Security Instrument.

(C) "Lender" is
USA FUNDING CORP.
Lender is a corporation organized and existing under the laws of
State of Wisconsin Lender's address is
17035 W. WISCONSIN AVE
BROOKFIELD, WI 53005
Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated FEBRUARY 6, 2003
The Note states that Borrower owes Lender

ONE HUNDRED FIFTEEN THOUSAND TWO HUNDRED AND 00/100
Dollars (U.S. \$ 115,200.00) plus interest. Borrower has promised to pay this debt in regular Periodic
Payments and to pay the debt in full not later than MARCH 1, 2033

(E) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due

all

403PAID 1-13-04#008

\$264.96 C

JP

RT

2/2
JP
1-13-04

After Recording Return To:
PEELLE MANAGEMENT CORPORATION
ASSIGNMENT JOB #90816
P.O. BOX 30014
RENO, NV 89502-3014
(775) 827-9800

Tax ID No. 64.01.33.006017

(Space Above This Line For Recording Data)

Loan No. 20302309N
Commitment No.

22-109 37
8478183
4683
ASSIGNMENT OF MORTGAGE

* USA FUNDING CORP, a Wisconsin Corporation, for valuable consideration, grants, assigns, and transfers to
unmarried person, to USA Funding Corp on February 6, 2003, and recorded in the office of the Register of Deeds of Olmsted
County, Minnesota on January 16, 2004

as Document Number A1008374 ✓

in (Reel) _____ of (Records) _____ on (Image) _____
(Vol.) (Mortgages) (Page)

together with the note and indebtedness is secures. This assignment is made without recourse.

See attached legal description

USA FUNDING CORP

* JPMorgan Chase Bank as Trustee, c/o Residential Funding
Corporation, 2255 North Ontario, Suite 400, Burbank, CA 91504-3190

By Patricia A. Parr
Patricia A. Parr, Asst Vice President

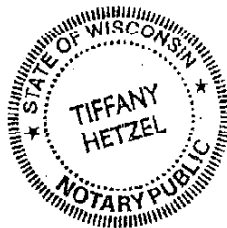
ACKNOWLEDGMENT

STATE OF WISCONSIN)
ss.
WAUKESHA COUNTY)

Personally came before me this February 6, 2003,
the above named Patricia A. Parr, Asst Vice President,
to me known to be the person who executed the foregoing
instrument and acknowledge the same.

Tiffany Hetzel
Notary Public, Waukesha County, Wisconsin

My commission expires: 12/17/04



This instrument was drafted by:

Stephen Nadolny
USA Funding Corp
17035 W. Wisconsin Avenue
Brookfield, WI 53005

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Case No. 04-35755-DDO
Chapter 7
Peggy Fromdahl,
Debtor(s)

MEMORANDUM OF LAW

JPMorgan Chase Bank as Trustee ("Movant"), submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Movant holds a valid, duly perfected mortgage on real property owned by the Debtors. On the date this case was filed, the Debtor(s) was delinquent in respect of payments due under the note and mortgage. Since this case was filed Debtor(s) has made no payments to Movant and as of this date thereof are in arrears in the total amount of \$15,153.25.

ARGUMENT

Under Section 362.(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such creditor." 11 U.S.C. Sec. 362 (d) (1). The Debtor(s) in this case has failed to make the payments required by the note and mortgage for a period of more than 13 months. Debtor(s) has not otherwise provided Movant with adequate protection of its interest in the property. Such circumstances constitute cause, within the meaning of Section 362 (d) (1), justifying relief from the stay. In Re Video East, Inc., 41 B. R. 176 (Bkrtcy. E. D. Pa. 1984); In Re Frascatore, 33 B. R. 687 (Bkrtcy. E. D. Pa. 1983).

Accordingly, Movant is entitled to an order terminating the stay and authorizing it to foreclose its mortgage on the property.

Dated: 10.13.01.

Respectfully submitted,
SHAPIRO & NORDMEYER, L.L.P.

By /e/ Nancy A. Nordmeyer
Nancy A. Nordmeyer-121356
Lawrence P. Zielke-152559
Attorney for Movant
7300 Metro Boulevard #390
Edina, MN 55439-2306
(952) 831-4060

SWORN CERTIFICATE OF SERVICE

STATE OF MINNESOTA)
) SS
COUNTY OF HENNEPIN)

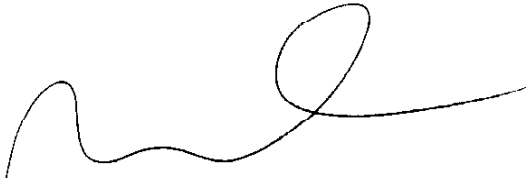
I, **Stephanie Pilegaard** says that on October 13, 2004, I mailed copies of the annexed Memorandum of Law, Proposed Order for Relief from Stay, Notice of Hearing and Motion for Relief from Stay and Certificate of Service on the following interested parties at their last known address, by mailing to them, via first class mail, a copy thereof, enclosed in an envelope, postage prepaid and by depositing the same in the post office at Edina, Minnesota.

Peggy Fromdahl
1134 4th Ave SE
Rochester, MN 55904

Daniel Ruffalo, Esq.
PO Box 6535
Rochester, MN 55903

Michael Dietz, Trustee
PO Box 549
Rochester, MN 55903

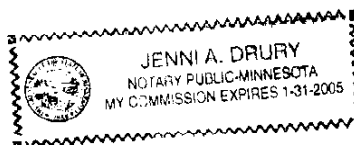
U.S. Trustee
1015 U.S. Courthouse
300 South 4th St.
Minneapolis, MN 55415



Stephanie Pilegaard

Subscribed and sworn to before me October 13, 2004.

Notary



03-27170
0435452701

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No. 04-35755-DDO

Peggy Fromdahl,

Debtor(s)

ORDER FOR RELIEF FROM STAY

The above-entitled matter came for hearing on November 3, 2004.

THIS CAUSE coming to be heard on the motion of JPMorgan Chase Bank as Trustee, a creditor in the proceeding, the Court having jurisdiction, due notice having been given, and the Court having been advised in the premises;

IT IS HEREBY ORDERED, that the automatic stay heretofore entered in this case is modified to the extent necessary to allow JPMorgan Chase Bank as Trustee, its successors and/or assigns, to foreclose, in accordance with State Law, the mortgage on the real property commonly known as:

Lot 23, Block 6, Elm Park Subdivision of Lots 8, 9, 10, 11 and 12, Block 3, D.P. Madden's Addition, Rochester, Olmsted County, Minnesota, and Lot 87, Auditor's Plat "A", less the West 132 feet thereof, and of Lots 95, 96, 103 and the East 33 feet of Lot 99, Auditor's Plat "A" of Lands in Section 1, Township 106, Range 14, Olmsted County, Minnesota.

NOTWITHSTANDING Federal Rule of Bankruptcy Procedure 4001 (a)(3), this order is effective immediately.

Dated: _____.

United States Bankruptcy Judge